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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,342	12/03/2003	Alfred Yoakim	88265-7072	8608
29157	7590	12/14/2005	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			KUHN, SARAH LOUISE	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 12/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/728,342

Applicant(s)

YOAKIM ET AL.

Examiner

Sarah L. Kuhns

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,10-12,14-16 and 19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,2,4,5,10-12,14-16 and 19 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1, 2, 4, 5, 10-12, 14-16 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 first states that the second material has properties to retain the water or beverage in the cartridge under an overpressure of 0.1 to 3 bar is achieved, but then states that the beverage passes through the second material when the overpressure of 0.1 bar is reached. This is inconsistent and makes the metes and bounds of the claims unclear.

Claim Rejections - 35 USC § 102

Claims 1, 2, 4, 5, 11, 12, 14, 16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Fond, U.S. Patent 5,897,899, for the reasons set forth in the previous Office Action.

Claim Rejections - 35 USC § 103

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond in view of Illy, U.S. Patent 4,253,385, for the reasons set forth in the previous Office Action.

Response to Arguments

Applicant's arguments filed September 30, 2005, have been fully considered but they are not persuasive.

Applicant argues that Fond does not disclose a second sheet made of filter paper or non-woven fiber or plastic material having a sufficiently tight mesh to retain water in the cartridge until the overpressure is reached and allows the beverage to pass through it when the overpressure of 0.1 bar is reached. However, Fond does disclose the use of filter paper, non-woven fiber, and plastic materials (column 6, lines 10-23) as discussed in the previous Office Action.

Applicant also argues that the tear face of Fond is capable of withstanding a pressure of above 1 bar and therefore teaches away from the claimed invention. However, as the newly added claim language contradicts the original claim language as discussed in the 35 U.S.C. 112 rejection above, it is not clear that this is the case. The claims require that the beverage be retained in the cartridge until an overpressure of 0.1 to 3 bar is achieved and the teachings of Fond meet this limitation.

Applicant argues that the present claims provide a cartridge that opens by internal pressure effect of the fluid alone and not by any external opening means. The

Examiner does not see where this limitation is included in the claims and asserts that Fond does read on the claims in their current condition.

Applicant argues that Fond fails to teach or suggest a second sheet that is made of filter paper or meshed plastic or fiber material that can provide a retarded opening effect before allowing the beverage to pass through as required by Claim 1. The Examiner respectfully disagrees and directs attention to column 5, lines 49-59, which discloses plastic materials and column 6, line 35, which discloses pure plastic.

Applicant argues that Illy discloses filter sheets that are permeable to water at atmospheric pressure. However, while Illy was relied on to show the conventionality of filter paper in the field of beverage cartridges, it was used to show the specific filter paper claimed. It would have been obvious to use a conventional material, such as filter paper, in the invention of Fond in a way that would not defeat the invention, i.e. filter paper that would sustain the pressure required by Fond.

Applicant goes on to list advantages achieved by the present invention, but no evidence of these advantages has been submitted and there is no mention of them in the claim language. Therefore, it is not seen how the claimed invention is patentable over the prior art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-


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1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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